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§ 80.1602 Applicability.

(a) The provisions of this subpart O shall apply beginning January 1, 2017, unless otherwise provided.

(b) The standards and requirements for gasoline sulfur under subpart H of this part shall continue to apply until the gasoline produced or imported by any refiner or importer is required to comply with the standards and requirements under this subpart O.

§ 80.1603 Gasoline sulfur standards for refiners and importers.

(a) *Sulfur standards*—(1) *Annual average standard.* (i) The refinery or importer annual average gasoline sulfur standard is 10.00 parts per million (ppm) or milligrams per kilogram (mg/kg), except as provided in paragraph (a)(1)(iii) of this section.

(ii) The averaging period is a calendar year (January 1 through December 31).

(iii) The refinery or importer annual average gasoline sulfur standard is the maximum average sulfur level allowed for gasoline produced at a refinery or imported by an importer during each calendar year beginning January 1, 2017, except as provided by the following:

(A) The credit use provisions of § 80.1616.

(B) Beginning January 1, 2020, for small refiners and small volume refineries approved pursuant to the provisions of § 80.1622. Small refiners and small volume refineries will continue to be subject to the provisions of subpart H of this part through December 31, 2019 (or until compliance with this subpart O begins).

(C) Fuels not subject to the standards and requirements of this subpart O as specified in § 80.1601(b).

(iv) The annual average sulfur level is calculated in accordance with paragraph (c) of this section.

(2) *Per-gallon cap standard.* (i) The refinery or importer per-gallon cap standard is 80 ppm, on a per-gallon basis except as otherwise provided by this section.

(ii) The per-gallon cap of paragraph (a)(2)(i) of this section is the maximum sulfur level allowed for any batch of gasoline produced at a refinery or imported by an importer beginning Janu-

ary 1, 2017, except for fuels not subject to the standards and requirements of this subpart O as specified in § 80.1601(b).

(3) *Use of credits.* The refinery or importer annual average gasoline sulfur standard may be met using credits as provided under § 80.1616. Credits cannot be used to meet the applicable per-gallon standard.

(b) [Reserved]

(c) *Calculation of the annual average sulfur level.* (1) The annual refinery or importer average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^n (V_i \times S_i)}{\sum_{i=1}^n V_i}$$

Where:

Sa = The refinery or importer annual average sulfur level, in ppm (mg/kg).

Vi = The volume of gasoline produced or imported in batch i, in gallons.

Si = The sulfur content of batch i determined under § 80.1630, in ppm (mg/kg).

n = The number of batches of gasoline produced or imported during the averaging period.

i = Individual batch of gasoline produced or imported during the averaging period.

(2) The annual average sulfur level calculation in paragraph (c)(1) of this section shall be conducted to two decimal places using the rounding procedure specified in § 80.9.

(d) *Oxygenate added downstream from the refinery or import facility.* A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content of a batch, provided that the following requirements are met:

(1) For oxygenate added to reformulated gasoline, RBOB, conventional gasoline, or CBOB, the refiner or importer shall calculate the sulfur content of the batch by volume weighting the sulfur content of the conventional gasoline or CBOB and the sulfur content of the added oxygenate pursuant to the following requirements:

(i) The sulfur content of any reformulated gasoline, RBOB, conventional gasoline, or CBOB shall be determined by sampling and testing each batch

pursuant to § 80.46 or § 80.47 as applicable.

(ii) For each complete annual compliance period, the sulfur content of all the oxygenate added downstream of the refinery or import facility shall be determined by one of the following methods:

(A) Testing the sulfur content of a sample of the oxygenate pursuant to § 80.46 or § 80.47, as applicable. The refiner or importer must demonstrate through records relating to sampling, testing, and blending that the test result was derived from a representative sample of the oxygenate that was blended with the batch of gasoline or BOB.

(B) If the oxygenate is denatured fuel ethanol, the sulfur content may be assumed to be 5.00 ppm.

(iii) For denatured fuel ethanol, the refiner or importer may assume that the denatured fuel ethanol was blended with gasoline or BOB at a concentration of 10 volume percent, unless the refiner or importer can demonstrate that a different amount of denatured fuel ethanol was actually blended with a batch of gasoline or BOB.

(iv) The refiner or importer of conventional gasoline or CBOB must comply with the requirements of § 80.101(d)(4)(ii).

(v) The refiner or importer of reformulated gasoline or RBOB must comply with the requirements of § 80.69(a).

(vi) Any reformulated gasoline, RBOB, conventional gasoline, or CBOB must meet the per-gallon sulfur standard of paragraph (a)(2) of this section prior to calculating any dilution from the oxygenate added downstream.

(vii) The reported volume of the batch is the combined volume of the reformulated gasoline, RBOB, conventional gasoline, or CBOB and the downstream added oxygenate.

(2) The refiner or importer who first certifies the gasoline, CBOB, or RBOB is the only person who may account for the downstream addition of oxygenate pursuant to the requirements of paragraph (d) of this section. On any occasion where any person downstream of the refinery or importer that produced or imported previously certified gasoline, CBOB or RBOB adds oxygenate to such product, it shall not include the

volume and sulfur content of the oxygenate in any compliance calculations or for credit generation under this subpart O.

(e) *Exclusions.* Refiners and importers must exclude from compliance calculations all the following:

(1) Gasoline that was not produced at the refinery or imported by the importer.

(2) In the case of an importer, gasoline that was imported as Certified Sulfur-FRGAS.

(3) Blendstocks transferred to others, except RBOB and CBOB as provided in this subpart O.

(4) Previously certified gasoline (PCG).

(5) Gasoline exempted from standards under § 80.1601(b).

(f) *Compliance calculation for the annual average sulfur standard.* (1) Compliance by a refinery or importer with the gasoline sulfur annual average standard at paragraph (a)(1) of this section is achieved if, for calendar year y, the compliance sulfur value is less than or equal to 10 times the total gasoline volume produced or imported, as determined by the following equation:

$$CSV_y = (V_y \times S_a) + D(y-1) - OC$$

Where:

CSV_y = Compliance sulfur value for year y, in ppm-gallons.

V_y = Total gasoline volume produced or imported in year y, in gallons.

S_a = Annual average sulfur level calculated in accordance with paragraph (c) of this section, in ppm (mg/kg).

$D(y-1)$ = Sulfur deficit from the previous reporting period, per § 80.1605, in ppm-gallons.

OC = Sulfur credits obtained by the refinery or importer, in ppm-gallons.

(2) Sulfur credits used in the calculation specified in paragraph (f)(1) of this section must be used in accordance with the requirements at § 80.1616.

(3) Compliance with the gasoline sulfur annual average standard at paragraph (a)(1) of this section is not achieved, and a deficit is created per § 80.1605, if for calendar year y, the compliance sulfur value is greater than 10 times the total gasoline volume produced or imported. The deficit value to be included in the following year's compliance calculation per paragraph

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(f) of this section is calculated as follows:

$$Dy = CSVy - (Vy \times 10y)$$

Where:

Dy = Sulfur deficit created in compliance period y, in ppm-gallons.

§ 80.1604 Gasoline sulfur standards and requirements for parties downstream of refiners and importers.

(a) The sulfur standard for gasoline at any downstream location shall be determined in accordance with the provisions of this section. A downstream location is any point in the gasoline distribution system downstream from refineries and import facilities, including, but not limited to, facilities of any of the following parties:

- (1) Distributors.
- (2) Carriers.
- (3) Oxygenate blenders.
- (4) Retailers.
- (5) Wholesale purchaser-consumers.

(b) Except as otherwise provided in this subpart O, the sulfur content of gasoline at any downstream location shall not exceed 95 ppm, on a per-gallon basis, beginning January 1, 2017.

§ 80.1605 Deficit carryforward for refiners and importers.

(a) *Deficit carryforward.* A refiner or importer may exceed the annual average sulfur standard for a given calendar year, creating a compliance deficit, provided that, in the calendar year following the year the standard is not met, the refinery or importer—

(1) Achieves compliance with the annual average sulfur standard in § 80.1603(a)(1); and

(2) Uses additional sulfur credits sufficient to offset the compliance deficit of the previous year.

(b) The compliance deficit value shall be calculated in accordance with § 80.1603(f)(3).

§ 80.1606 [Reserved]

§ 80.1607 Gasoline sulfur standards and requirements for transmix processors and transmix blenders.

Transmix processors and transmix blenders may comply with the following sampling and testing requirements and standards instead of the sampling and testing requirements and

standards otherwise applicable to a refiner under this subpart O.

(a) Any transmix processor who recovers transmix gasoline product (TGP) from transmix through transmix processing under § 80.84(c) must show through sampling and testing (using the methods in § 80.1630) that the TGP meets the applicable sulfur standards under § 80.1604(b), prior to the TGP leaving the transmix processing facility.

(b) The sampling and testing required under paragraph (a) of this section shall be conducted following each occasion TGP is produced.

(c) Any transmix processor who produces gasoline by adding blendstock to TGP must, for such blendstock, comply with all requirements and standards that apply to a refiner under this subpart O, and must meet the downstream sulfur standards under § 80.1604 for the gasoline produced by blending blendstock and TGP, prior to the gasoline leaving the transmix processing facility.

(d) Any transmix processor who produces gasoline by blending blendstock into TGP must meet the sampling and testing requirements of this subpart O using one of the following methods:

(1) *Option 1.* (i) Sample and test the blendstock that will be added to TGP during the compliance year when received at the transmix processing facility, using the methods specified in § 80.1630, to determine the volume and sulfur content, and treat each volume of blendstock that is blended into a volume of TGP as a separate batch for purposes of calculating and reporting compliance with the applicable annual average and per-gallon cap sulfur standards in § 80.1603.

(ii) Use sulfur test results of the blendstock supplier provided that all the following requirements are met:

(A) Sampling and testing by the blendstock supplier is performed using the methods specified in § 80.1630.

(B) Testing for the sulfur content of the blendstock in the supplier's storage tank must be conducted following the last receipt of blendstock into the supplier's storage tank that supplies the transmix processor.

(C) The transmix processor must obtain a copy of the blendstock supplier's